No. 43.

Brf. of Carter for P. C.

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Supreme Court of the United States,

OCTOBER TERM, 1902.

No. 43.

THE NORTHERN CENTRAL RAILWAY COMPANY,

PLAINTIFF IN ERROR,

vs.

THE STATE OF MARYLAND,

DEFENDANT IN ERROR.

In Error to the Court of Appeals of Maryland.

BRIEF FOR THE PLAINTIFF IN ERROR.

BERNARD CARTER,
For Plaintiff in Error.

5597

IN THE

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The Writ of Error in this case (Record, 1 to 4) is to the Court of Appeals of Maryland, under the 25th Section of Chapter 20 of the Judiciary Act of 1789, Title 13, (See Chapter 11, Section 709, Revised Statute U. S.) to review the final judgment for $17,124.17 in favor of the State of Maryland, the Defendant in Error, rendered in that Court on the 7th day of

October, 1900, (Record, 39), on appeal from the Superior Court of Baltimore City, in the suit of the State of Maryland against the Northern Central Railway Company, the Plaintiff in Error, the Court of Appeals of Maryland being the highest Court of the State of Maryland in which a decision in the suit could be had; and in the suit was drawn in question the validity of the Act of the General Assembly of Maryland of 1890, Chapter 559, being a Statute of that State, upon the ground that it is repugnant to the 14th Section of the First Artitle of the Constitution of the United States, the decision of the Court having been in favor of the validity of the Statute.

HISTORY OF THE LITIGATION IN WHICH THE ABOVE-MENTIONED JUDGMENT WAS RENDERED.

(1) By the Act of Assembly of Maryland of 1890, chapter 559, the State of Maryland imposed a State tax of *one per centum* annually upon the gross receipts of all steam railroad companies incorporated by or under the authority of the State of Maryland or doing business therein, making provision that where any company has part of its railroad in Maryland and part out of it, that company shall pay upon that proportion of its gross receipts which the length of its line in Maryland bears to its whole line.

The suit against the Railroad Company, the Plaintiff in Error, in which the above mentioned judgment of the Court of Appeals of Maryland was rendered, was brought under the provisions of this Act, in the Superior Court of Baltimore City, of the State of Maryland, a Court having original jurisdiction of such suits, in September, 1896, to recover $13,142.35, being *one per centum* upon the gross receipts of the Railway Company within the State of Maryland for the year ending January 31, 1896.

(2) The Railway Company denied the right of the State of Maryland to maintain this suit, claiming, (1) that by virtue of the Act of Assembly of Maryland of 1880, chapter 16, a valid irrepealable contract has been entered into between it and the State, that no greater or other tax should ever be imposed on the franchises, property or gross receipts of the company, than *one-half of one per centum* per annum on the gross receipts of the Company within the State of Maryland, and that, therefore, if the State of Maryland intended the Act of 1890, chapter 559, to be applicable to the said Railway Company and to operate as a repeal of the Act of 1880, chapter 16, said Act of 1890, chapter 59, impaired the above-mentioned contract, and was, therefore, as to the said Railway Company, null and void. And (2) that the State of Maryland did not intend the Act of 1890, Chapter 559, to be applicable to the said Railway Company, and so did not intend it should operate as a repeal of the Act of 1880, Chapter 16.

(3) This suit was tried in November, 1898, in the Superior Court of Baltimore City, before Hon. J. Upshur Dennis, the Judge sitting in that Court, without the aid of a jury. Judge Dennis held (1) that the Legislature *did intend* the Act of 1890, Chapter 559, to be applicable to the Northern Central Railway Company, and did thereby intend to repeal the Act of 1880, Chapter 16, and to impose on said Company a tax of *one per cent.* per annum upon its gross receipts, but (2) that by virtue of the Act of 1880, Chapter 16, a valid irrepealable contract had been entered into between the State and the Company that no other tax should ever be imposed on the franchises, property or gross receipts of the Company, except a tax of *one-half of one per cent.* per annum on its gross receipts within the State of Maryland;

and, therefore, the Legislature could not by the Act of 1890, Chapter 559, impose on the gross receipts of the Company a tax of *one per cent.* per annum. He accordingly gave judgment in favor of the State for only $6,575.17 (Record, 10, 11), the amount admitted to be due by the Railway Company, being *one-half of one per cent.* on the gross receipts of the Company for the year ending January 31, 1896.

He wrote and filed a full, clear, and able opinion in support of his judgment.

Record, 7 to 10.

(4) From this judgment the State of Maryland prosecuted an appeal to the Court of Appeals of Maryland. Upon the hearing of this appeal in January, 1900, the Court of Appeals of Maryland reversed the judgment of the Court below, and remanded the case for a new trial to that Court in order that judgment might be had therein in accordance with the rulings of the Court of Appeals.

The Court in its opinion:

(*a.*) Affirmed the ruling of Judge Dennis that the Legislature *intended* by the Act of 1890, Chapter 559, to repeal, and did thereby repeal the Act of 1880, Chapter 16, and by the former Act imposed on the said Railway Company a tax of *one* per centum per annum on its gross receipts within the State of Maryland. And—

(*b.*) Reversed the other ruling of Judge Dennis, and decided that an irrepealable contract had not been made between the State of Maryland and the Railway Company by the Act of 1880, Chapter 16, that no other tax on its franchises, property or gross receipts should ever be imposed except a tax of one-half of one per cent. on its gross receipts within the State of Maryland; and that, therefore, the Legislature of

Maryland had not, by the Act of 1890, Chapter 559, impaired the obligation of the contract which it had made with the Railway Company.

For the Opinion of the Court see Record 20 to 26.

(5) The new trial thus ordered took place in the Superior Court of Baltimore City on June 18, 1900, on which day a judgment was rendered in favor of the State for the full amount claimed by it, being *one per cent.* on the gross receipts of the Company within the State of Maryland, for the year ending January 31, 1896, interest, etc.

This result necessarily followed under the rulings of the Court of Appeals of Maryland.

But with the view of being able to have the controverted question above mentioned passed on in this Court, (as no final judgment has yet been rendered in the Court of Appeals of Maryland) at the new trial in the Superior Court such facts, documentary and otherwise, as were considered necessary to present the legal questions involved, were again offered in evidence (Record, 27 to 37), and the Railway Company, the Defendant in the case, presented (under the Maryland practice) the same prayers for rulings on the matters in controversy which it had presented at the first trial of the case, the plaintiff offering no prayers. (Record, 37 38.)

The prayers above mentioned are these:

Defendant's Prayer No. 1.

The defendant prays the Court to rule as a matter of law that if the Court, sitting as a jury, shall find from the admission of the parties and the evidence in the case that the Act of Assembly of Maryland of

1880, chapter 16, was duly accepted by the stockholders of the defendant company as required by said Act, and the certificate of acceptance duly filed as therein required; and that the defendant company since the passage of said Act, has done all the things required of it to be done by said Act, including the payment of one-half of one per cent in each year, since the passage of said Act up to the year ending January 31, 1895, inclusive, upon the gross receipts of the defendants mentioned in said Act of 1880, chapter 16, and that it tendered payment in the manner set forth in the correspondence offered in evidence by the defendant, of one-half of one per cent. upon said gross receipts for the year ending January 31, 1896, then the plaintiff, said tender having been refused, as shown in said correspondence, cannot recover in this action any other sum than the amount so tendered, even although the Court determine, as a matter of law, that said Act of 1880, chapter 16, was repealed by the Act of 1890, chapter 559, because the said Act of 1880, chapter 16, *was a valid and binding contract between the* State of Maryland and the Northern Central Railway Company, *and so protected by the Constitution of the United States from impairment by any legislation of the State of Maryland.*

Defendant's Prayer No. 2.

The defendant prays the Court to rule as a matter of law, that if the Court, sitting as a jury, shall find from the admissions of the parties and the evidence in the case, that the Act of Assembly of Maryland of 1880, chapter 16, was duly accepted by the stockholders of the defendant company as required by said Act, and the certificate of acceptance duly filed as therein required, and that the defendant company, since the passage of said Act, has done all the things required of it to be done by said Act, including the payment

of one-half of one per cent. in each year, since the passage of said Act up to the year ending January 31st, 1895, inclusive, upon the gross receipts of the defendant mentioned in said Act of 1880, chapter 16, and that it tendered payment in the manner set forth in the correspondence offered in evidence by the defendant, of one-half of one per cent. upon said gross receipts for the year ending January 31st, 1896; then the plaintiff, said tender having been refused, as shown in said correspondence, cannot recover in this action any other sum than the amount so tendered, because, even though the Court should hold as matter of law that the said Act of 1880, chapter 16, was not a contract within the protection of the Constitution of the United States, yet the said Act of 1880, chapter 16, was not repealed by the Act of 1890, chapter 559.

Both of these prayers were refused by the Judge, to which rulings of the Court the Railway Company took exception in due form, (Record, 38), and a verdict and judgment having been rendered in favor of the plaintiff, the Railway Company took its appeal to the Court of Appeals for a review of these rulings. (Record, 38.)

(6) Upon this Appeal the case was again heard in the Court of Appeals of Maryland in December, 1900, (without any further argument of counsel), and the Court affirmed the rulings of the lower Court, for the reason given in its former opinion (Record, 39-40), and gave the judgment in favor of the State of Maryland for $17,124.17, which is the judgment brought here by the Writ of Error.

Before stating the propositions for which the Plaintiff in Error contends, and in which will be assigned the Errors in the rulings and judgment of the Court of Appeals of Maryland of which the complaint is

made, it is necessary for their intelligent presentation that these should be given to the Court:

A history of the relations between the State of Maryland and the Northern Central Railway Company, and a statement of the legislation of the State out of which the questions to be decided by this Court arise.

1. By the Act of Assembly of Maryland of 1827, chapter 72, the State of Maryland chartered the Baltimore and Susquehanna Railroad Company, with authority to construct a railroad from the city of Baltimore to the Susquehanna River. At the same time other corporations were chartered by the State of Pennsylvania to construct a railroad from a dividing line between Maryland and Pennsylvania, starting in the State of Pennsylvania, and in connection with the Maryland road from Baltimore extending to Sunbury, Pennsylvania, by way of Harrisburg. The line of railroad for the construction of which provision was thus made by Maryland and Pennsylvania was built and operated as practically one railroad, having substantially the same stockholders, and was so being operated as far as Harrisburg at the time of the passage by the State of Maryland of the Act of Assembly of 1854, chapter 250, and the passage in the same year by the State of Pennsylvania of a similar Act.

By these acts of 1854, authority was given by both States to the said several companies to consolidate with each other, so as to form one company or corporation, on *such terms and conditions as the said companies should agree upon*, subject to certain general provisions set forth in the said Acts Among the provisions contained in the Maryland Act was one that all existing laws of the State of Maryland in reference to the said Baltimore and Susquehanna Company should be binding and operative upon the consolidated com-

pany; and that said company should possess all the corporate powers and privileges, and be subject to all the duties and obligations not inconsistent with the Act and its general intent, which were expressed in the charter of the Baltimore and Susquehanna Company.

In the Articles of union which the companies were thus authorized to agree upon, it was declared that all the *property, rights, privileges and immunities* belonging to the several companies *were transferred to the consolidated company.*

2. Among the provisions of the charter of the Baltimore and Susquehanna Company was one exempting forever from taxation all its shares of stock, by means of which provision, *all its property was exempted from taxation*, as had been expressly declared by the Court of Appeals of Maryland long before the year of 1854.

12 Gill & J. 117, Tax Cases.
6 Gill, 288, State vs. B. & O. R. Co.

3. As authorized by the States of Maryland and Pennsylvania, and *by virtue of the articles of union adopted by the companies* the Northern Central Railway Company came into existence, and into the possession of all the *rights, privileges and immunities* of the several companies, by the union of which it was formed.

4. *From 1854 down to the year 1875*, the said company claimed and enjoyed, without question, entire immunity from taxation in reference to all its property within the State of Maryland, under and by virtue of the immunity granted to the Baltimore and Susquehanna Railroad Company by the Act of 1827, chapter 72, and the transfer to it of that immunity.

5. But the State of Maryland having in the year 1872, by chapter 234 of the Acts of 1872 and in the year 1874, by chapter 408 of the Acts of 1874 (the latter

Act superseding the former Act) imposed a tax of one-half of one per cent. upon the gross receipts of all steam railroad companies incorporated by Maryland and doing business therein, suits were brought in the Superior Court of Baltimore City by the State of Maryland against the said company (one in 1873 and the other in 1874) to recover the said tax upon the gross receipts of the company from that part of its railroad lying in the State of Maryland. *These suits were decided, after full argument, by Judge Dobbin sitting in the Superior Court, in an able opinion, in favor of the Company,* and upon appeal, they were heard in the Court of Appeals at the October term, 1875, which Court *reversed* the lower Court (44 Md., 131). The opinion of the majority of the Court was delivered by Judge Robinson.

Judge Alvey, now Chief Justice of the Court of Appeals of the District of Columbia, dissented, and filed an able and elaborate opinion in support of his dissent.

So far as it is necessary to state the grounds upon which the majority of the Court rested its decision, and those on which Judge Alvey rested his dissent, they are as follows:

6. The majority of the Court formed its conclusion upon the following propositions: (*a*) Although the charter granted to the Baltimore and Susquehanna Railroad Company did undoubtedly exempt from taxation all the property of said company, so that if that company had not been consolidated under the Act of 1854 with other companies, and so formed the Northern Central Railway Company, its gross receipts from the road could not be taxed, yet the effect of the consolidation was to form a new company, and merge the Baltimore and Susquehanna Railroad Company and all its rights, privileges and

immunities into the new company; and that, therefore, it followed that although the immunity from taxation which the Baltimore and Susquehanna Company enjoyed was to be enjoyed by the new company, it was enjoyed by a new and special grant from the Legislature, which grant was made by the Act of 1854 which created the new corporation.

(*b*) This being so, then as this Act was passed during the existence of the Constitution of 1851, which provides that all general laws or special Acts creating corporations, may be altered from time to time or repealed, the Act of 1854, chapter 280, was alterable or repealable.

(*c*) That the Acts of Assembly of Maryland, of 1866, chapter 157, and 1870, chapter 362, had repealed the exemption granted by the Act of 1854, chapter 250.

44 Md. 163.

7. To the contrary, Judge Alvey held that the immunity from taxation which had belonged to the Baltimore and Susquehanna Company, was *never surrendered or extinguished*, but was kept alive and vested in the new company, to be by it enjoyed just as it had been by the Baltimore and Susquehanna Company, passing to the new company as an incident to its stock or property, and became vested in the new company, *not at all by grant from the State, but under the articles of union which the companies entered into; and consequently was not brought within the* provision of the constitution, and that therefore the Legislature could not, by a repeal or modification of the Act of 1854, chapter 250, destroy or impair the original franchises, privileges, or immunities granted to the Baltimore and Susquehanna Railroad Company, which were *transferred* to the Northern Central Railway Company, and were secure under the Constitution of the United States. (44 Md. 174 to 177.)

Referring to the positions taken by the State, he said:

"As to the first, that the defendant was, to all intents and purposes, created a new corporation by, and derived all its powers, rights, privileges and immunities from, the Act of 1854, and is therefore subject to any tax that the Legislature may think proper to impose, I think is not sustainable either upon reason or authority.

"It must be observed, that the corporations consolidating did not propose to the Legislature to surrender all their franchises, powers, rights, privileges and immunities to the State, to be disposed of as it might think proper; nor did the Legislature propose to release and discharge them from their duties and obligations. It was simply proposed by the companies, with the sanction and authority of the State, to unite and consolidate themselves, with all their property, franchises, rights, powers, privileges and immunities, under a new organization, and the Legislature was appealed to for authority thus to unite and combine, to accomplish the objects of their original charter. This consolidation when formed resulted in a new corporate body, as matter of convenience as well as of necessity. But it did not follow that the original corporations were all dissolved, and that their franchises, powers and privileges reverted to the State granting their charters. It is manifest, both from the Act of 1854, and the articles of union and consolidation, that such was not the intention, and neither the State nor the companies ever supposed for a moment, that there was anything more in the Act of 1854, than an authority to unite and consolidate existing corporations on certain conditions; the corporations in no manner being required to abandon or surrender their existing franchises, privileges and immunities. The inducement to the consolidation was the existing rights, privileges and immunities, held by the several corporations consolidating, and with these it was neither within the power, nor was it the purpose, of the Legislature to interfere. It was not the Act of 1854, that produced the consolidation, but it was the articles of union agreed on by the corporations themselves, under the authority of the Act, as the means the better to accomplish the objects for which their several charters were granted. The separate organizations and control were surrendered to the new organization, and became merged therein; but in doing that, it was required that the consolidated company should 'bring its organization into agreement and consistency with the terms and conditions of the charters of the several companies, *of which the said consolidated company shall be composed.*' The charters were not

only subsisting, but by the express terms of the Act of 1854, all the laws in reference to the Baltimore and Susquehanna R. Company, were made binding and operative upon the consolidated company, so far as its property or its operations might be within the jurisdiction of the State.

"In this view of the subject, I cannot resist the conviction, that the case falls exactly within the reason and principle of the case of the *Philadelphia, Wilmington and Baltimore Railroad Company vs. Maryland*, 10 *How.*, 376. In that case, the railroad company mentioned was a corporation composed of several railroad companies which had been previously chartered by the States of Maryland, Delaware and Pennsylvania; and which, by corresponding laws of the respective States, were united together, and formed one corporation under the name and style just mentioned. And in determining upon the rights that this consolidated company acquired under the Act authorizing the consolidation, Chief Justice TANEY, speaking for the Court, said: 'Now, as these companies held their corporate privileges under different charters, the evident meaning of this provision is, that whatever privileges and advantages either of them possessed, should in like manner be held and possessed by the new company, to the extent of the road they had respectively occupied before the union; that it should stand in their place, and possess the power, rights and privileges they had severally enjoyed in the portions of the road which had previously belonged to them. And this intention is made still more evident by the fourth section of the law, which makes the new corporation responsible for the contracts, debts, obligations, engagements and liabilities at law or in equity of the several companies, and declares that it shall hold and be entitled to all the estate, real, personal and mixed, &c., belonging to or due to the several companies.' The Act authorizing the consolidation in that case, was very similar in substance to the one under which the consolidation of the companies in this case took place. And in the more more recent case, involving a similar question, the same learned tribunal has declared, that 'The keeping alive of the rights and privileges of the old company, and transferring them to the new company in connection with the property, indicates the legislative intent, that such property was to be holden in the same manner and subject to the same rights as before. The owners of the property were to lose no rights by the transfer, nor was the public to lose any rights thereby.' *Tomlinson vs. Branch*, 15 *Wall.*, 460, 465. The same principle is fully stated and applied in the *Delaware Railroad Tax Case*, 18 *Wall.*, 206.

"If, then, the rights, privileges and immunities of the Baltimore and Susquehanna Railroad Company were not surrendered or extinguished, but were kept alive, and transferred to and vested in the consolidated company, as they were originally granted, to be exercised and enjoyed as before the consolidation, it follows that the exemption from taxation, being one of the privileges or immunities to which the original company was entitled under its charter, adhered and passed as incident to its stock or property, and that such exemption was in no manner rendered subject to legislative control by the Act of 1854. By the transfer authorized by the Act and made by the articles of union and consolidation, the franchises, rights, privileges and immunities previously granted, and which were, by the well-established law at the time, beyond legislative control, became vested in the consolidated company, not by grant of the State, but under the articles of union, and consequently were not brought within the provision of the Constitution of 1850. The most that the State could claim to do under the constitutional provision, would be either to repeal or modify the Act of 1854; but by neither a repeal of nor alteration in that Act could the Legislature destroy or impair the original franchises, rights, privileges or immunities granted to the Baltimore and Susquehanna Railroad Company, and which are secured under the Constitution of the United States."

8. These two opinions having been delivered and filed, the judgment of the Superior Court in favor of the company was reversed and the cases were sent back, to be *re-tried* in the Superior Court of Baltimore City, in March, 1876.

In these cases, which had been thus remanded to the Superior Court of Baltimore City in March, 1876, for a new trial, no movement had been made by the State, the plaintiff in the cases, to bring them to a trial, up to the time the above mentioned Act of the General Assembly of Maryland of 1880, chapter 16, was passed, under which Act the Plaintiff in Error claims the rights, for the maintenance of which, the present Writ of Error is brought.

This Act is printed in full in the Record, pages 32 to 34; also on pages 12 to 14.

ASSIGNMENT OF ERRORS.

The plaintiff in error assigns the following as the errors committed by the Court of Appeals of Maryland in its rulings and judgment; that is to say—By its rulings and judgment, appearing in the Record in this case, the said Court adjudged and determined that the Act of Assembly of Maryland of 1880, chapter 16, its acceptance and the performance of its conditions by the Northern Central Railway Company, did not constitute, between the State and the company, a valid irrepealable contract, that no tax should be imposed by the State of Maryland, upon the property, franchises and gross receipts of said company, except an annual tax of one-half of one per cent. per annum on its gross receipts within the State of Maryland, and that as the said Act of 1880, chapter 16, was repealed by the Act of Assembly of Maryland of 1890, chapter 559, and thereby there was imposed an annual tax of one per cent. on the gross receipts of said company within the State of Maryland, said repeal and imposition of said tax was an exercise of lawful legislative authority by said State, and did not impair the obligation of the compact made by the State with said company; and said Court did therefore render judgment on December 17, 1900, against said company in favor of the State of Maryland for $17,124.17, being one per cent. on the gross receipts of said company for the year ending January 31, 1896, with interest for each and costs.

There having been thus drawn in question in the Court of Appeals of Maryland, the validity of the said Act of Assembly of Maryland of 1890, chapter 559, upon the ground that it is repugnant to the tenth section of Article 1 of the Constitution of the United States, and the decision of said Court having been in favor of the validity of the said statute, this Court has jurisdiction to review the said judgment; and there being for the reasons above stated, error in said judgment of the Court of Appeals of Maryland, it must be reversed by this Court.

The Record (as required by the rule in such cases, 114 U. S. 135, Detroit R. R. vs. Guthard), shows that the Federal question above stated was raised, and

decided as set forth in the Assignment of Errors. See Prayers offered by Railway Company, (Brief, pages 5-7); opinion of Court on First Appeal (Record, 23 to 26), and on Second Appeal (Record, 39).

PROPOSITIONS UPON BEHALF OF THE PLAINTIFF IN ERROR.

FIRST PROPOSITION.

The State of Maryland by the Act of 1880, chapter 16, and by its acceptance by the Northern Central Railway Company, entered into a contract, upon the terms and conditions therein set forth, with the company, upon valuable considerations moving to the State from the company, whereby the State agreed that no tax should ever thereafter be imposed under the laws of the State, upon the franchises, property or gross receipts of the company, except an annual tax of one-half of one per cent. on the gross receipts of the company within the State of Maryland.

SECOND PROPOSITION.

The contract thus made was a valid contract establishing the extent to which the property, franchises and gross receipts of the railway company could be taxed by the State of Maryland, not only so long as the contract existed, but it was not subject to alteration or abrogation by the State of Maryland by a repeal of the Act of 1880, chapter 16, or otherwise; and the contract remained forever binding upon both of the parties to it until put an end to by the consent of both parties.

THIRD PROPOSITION.

The railway company having fully complied with the terms and conditions of the contract, and its consent to the abrogation of the contract never having

been obtained, it has not been, and is not now, within the power of the State of Maryland to impose any tax upon the franchises, property or gross receipts of the company, except a tax of one-half of one per cent. per annum on the gross receipts of the company within the State of Maryland.

FOURTH PROPOSITION.

The State of Maryland having by the Act of Assembly of 1890, chapter 559, repealed the Act of 1880, chapter 16, and imposed a tax of one per cent. annually thereafter upon the gross receipts of the company within the State of Maryland, thereby impaired the obligation of the contract, contrary to the inhibition contained in the tenth section of the first Article of the Constitution of the United States.

FIRST PROPOSITION.

The State of Maryland by the Act of 1880, chapter 16, and by its acceptance by the Northern Central Railway Company, entered into a contract, upon the terms and conditions therein set forth, with the company, upon valuable considerations moving to the State from the company, whereby the State agreed that no tax should ever thereafter be imposed under the laws of the State, upon the franchises, property or gross receipts of the company, except an annual tax of one-half of one per cent. on the gross receipts of the company within the State of Maryland.

This proposition does not involve the question whether the contract therein mentioned was a contract which the State had a right to make, subject to abrogation by a repeal of the Act of 1880, Chapter 16, nor whether it was an irrepealable contract. These are questions involved in the *Second Proposition* above stated.

In support of this first proposition it is respectfully submitted.

I.

It is the established law of this Court that a legislative enactment, in the ordinary form of a Statute, may contain provisions, which when accepted as a basis of action by individuals or corporations, become contracts between them and the State.

6 Cranch, 135, Fletcher vs. Peck.
16 Howard, 428, Ohio Life Ins. etc. Co. vs. Debolt.
16 Howard, 389, State Bank, etc. vs. Knoop.
101 U. S. 114, New Jersey vs. Yard.
114 U. S. 292, Virginia Coupon Cases.

CONSTRUCTION OF THE ACT OF 1880, CHAPTER 16.

I.

It was the intention of the State and the Railway Company to enter into a binding contract.

It is clear from the Act of 1880, Chapter 16, that the intention and understanding of the State and of the Railway Company was that by the passage of this Act, its acceptance by the Railway Company, and compliance by it with the conditions upon which the Act was to take effect, a *contract would be made between the parties*, the provisions of which were embodied in the Act.

This is made manifest by the title of the Act, its preamble and the body of the Act.

(*a.*) In its title the Act declares that it is an Act to adjust and settle *finally* by AGREEMENT *all pending con-*

troversies between the State of Maryland and the Northern Central Railway Company *by subjecting the franchises and property of said Company within the State to taxation for State purposes to* A CERTAIN EXTENT, and providing for the payment of a certain indebtedness claimed by the State of Maryland to exist on the part of the Railway Company to the State.

The recitals of the preamble are in keeping with the title, and set forth the *nature* of the controversy then existing between the State and the Railway Company. It says that a controversy had arisen and then exists between the parties in reference to the *right* of the State of Maryland to subject to taxation the franchises and property of the Railway Company; that this controversy was this: (1) a claim by the Company that all of its franchises and property were forever exempt from taxation, the ground of the claimed exemption being that among the terms and conditions of the union and consolidation of the Baltimore & Susquehanna Railroad Company with the other Companies forming the Northern Central Railway Company, and which union and terms and conditions were authorized by the Act of Assembly of Maryland of 1854, Chapter 250, was the condition that the latter Company should have all the rights and privileges, and immunities of each of said Companies, and that among the immunities of the Baltimore & Susquehanna Railroad Company was the immunity from taxation: (2) the denial of this claim by the State of Maryland; the State claiming that *notwithstanding* the provisions of the Act of 1854, Chapter 250, and all the terms and conditions thereby authorized for the union and consolidation of the several companies therein mentioned, all the property of the Company, including its gross receipts, was liable to taxation by the State of Maryland. The preamble further recites the claims of the State, and

the Railway Company, being as above stated, that an annual tax of one half of one per cent. upon the gross receipts of all Railroad Companies worked by steam incorporated by the State of Maryland having been imposed by the Acts of Assembly of Maryland of 1872 and 1874, suits had been instituted to recover of the Northern Central Railway Company this tax, and the State had caused the property of the Company to be assessed as liable to taxation for county and municipal purposes.

The preamble then recites that the Railway Company has the right to have this question thus at issue between the State of Maryland and the Railway Company carried to the Supreme Court of the United States to be there decided, and that it had been represented to the General Assembly that what would be the ultimate decision of this question is a matter of great doubt, and that it is deemed to be moreover just and proper that an equitable *settlement* should *be made of the matters so in controversy*, and that it had been represented to the General Assembly that the Railway Company, *for the purpose of making such settlement*, is willing to pay a tax of one half of one per centum on its gross receipts within the State, upon the terms and conditions thereinafter, that is, in the body of the Act, set forth.

The title declared that the object of the Act was to adjust and settle *finally by agreement* all pending controversies between the State and the Railway Company, by subjecting the franchises and property of the company within the State, to *taxation* for State purposes, *to a certain extent;* but did not set forth the nature of the controversy, or the details of the agreement so to be made.

The preamble then proceeds to state the question which forms the subject of controversy, and that if no *agreement* could be entered into for its settlement, it

must be decided by the Supreme Court of the United States, and that instead of its being left for such decision it was deemed just and proper that an equitable settlement should be made of the matter in controversy, and that for the purpose of making such settlement the Railway Company is willing to pay the tax therein mentioned, upon the terms and conditions set forth in the body of the Act.

Considering, therefore, the title and preamble together, it is respectfully submitted that, there can be no room for fair controversy, that the State and the Railway Company understood that what was taking place was *the making of a contract between them* upon the terms set forth in the body of the Act, of the controversy then existing as to the right of taxation by the State of the property and franchises of the Railway Company.

The body of the Act still further manifests the same understanding of the parties. For, after setting forth the terms and conditions of the contract, (which the concluding clause of the preamble said would be therein set forth,) that is to say, that the franchises and property and gross receipts of the Company within the State of Maryland shall be subject to taxation for State purposes to the extent of an annual tax of one-half of one per centum upon its gross receipts within the State of Maryland, and that said franchises, property and gross receipts shall not be subject to any other tax under the laws of the State of Maryland, (*excepting certain classes of property mentioned in the proviso, which proviso will be hereafter explained, but is in no way material to the questions now before the Court*). The body of the Act then declares that it shall not take effect until the sum of money mentioned in the Act shall have been paid as therein set forth, nor until the Act and all of its provisions *shall have been accepted*

in the method set forth in the Act, that is to say, by the stockholders of the Company at a general meeting of the same, the acceptance to be evidenced by an instrument of writing under the corporate seal of the Company, to be filed in the office of the Secretary of State of Maryland.

It is thus apparent that the State, one party to the intended contract, declares its assent to its terms in the way in which alone the State could manifest its assent and be bound by the contract, that is to say, by an Act of Assembly of Maryland approved by its Governor; but as both parties realized that the proposed contract could not be made unless the assent of both parties to it was given, therefore the Act requires that the assent of the Railway Company shall be given, and *recognizing the importance and solemnity of the proposed contract*, requires that it should be assented to, not by the Directors of the Company, but by its Stockholders.

It is impossible to conceive that the Act of Assembly of 1880, chapter 16, would have been required to be assented to by the Company if the parties did not understand that the controversies between them were to be settled by virtue of a solemn contract entered into for the purpose; but, understood that instead thereof, the State of Maryland was, of its own volition, granting to the Company the right to pay the limited amounts of taxation in the Act stipulated for in lieu of the obligation to pay the same taxes which other similar companies would, from time to time, be obligated to pay under the laws of the State of Maryland.

It is respectfully submitted, therefore, that the Act of 1880 was by both the State of Maryland and the Railway Company understood and intended to be a contract made between them whereby the controversy then existing between them should be finally terminated upon the terms set forth in the Act of Assembly.

It was the intention of the parties to the contract, that a contract was entered into between them that no tax should ever thereafter be imposed under the laws of the State, upon the franchise property or gross receipts of the Railway Company, except an annual tax of one per cent. on the gross receipts of the Company within the State of Maryland.

The very nature of the respective claims of the parties to the contract, which the Act was intended to settle finally by agreement, shows that the stipulation of the contract that the franchises, property and gross receipts of the Company shall be subjected to an annual tax of one half of one per cent. on the gross receipts within the State of Maryland, but shall not be subject to any other tax under the laws of Maryland, can only be interpeted to mean, that this was to be of perpetual duration.

For the claim of the Company was that all its franchises and property of every kind and description was *forever* exempt from taxation, and the claim of the State was that all its franchises and property was forever subject to taxation, according to the system, and at the rates of taxation current from time to time under Maryland Statutes; which respective claims the *title* of the Act declared were to be *finally settled* by agreement by subjecting the property and franchises of the Company within the State to taxation to a "certain extent," which "certain extent" was subsequently defined in the preamble and body of the Act to be an annual tax of one half of one per cent. of the gross receipts of the Company within the State of Maryland.

That which was to be settled *finally by agreement* was not the extent of taxation for the time being, nor during the pleasure of one or both the parties, but was to be co-extensive as to duration of time with the

extent of the respective claims so settled, *and in substitution for each of which* the limited taxation mentioned in the contract was made.

The payment of the annual tax of one-half of one per cent. on the gross receipts was a substitution for the annual tax as the State claimed the right to impose, which claim was to tax in *each and every year forever, all the property and franchises* of the Company; and it was in substitution for the claim of the Company that never in any year could any tax be imposed on any of its property. Certainly no settlement of the respective claims of the State and the Company could be called a *final* settlement, which was not one to cover all *future taxation*.

In explanation of the meaning, in the first section of the Act of 1880, chapter 16 of the *proviso* following the provision that the franchises, property and gross receipts of the company shall not be subject to any other tax under the laws of the State of Maryland, except the tax of one-half of one per cent. on its gross receipts.

This proviso is that all such property, works and structures of the company which are, or may be, taxable within the meaning of the Court of Appeals of Maryland rendered in the year 1878, in the case of the State of Maryland vs. Baltimore & Ohio Railroad Company, shall be still subject to taxation for county and municipal purposes in the same way and to the same extent as the property of individuals. The decision of the Court of Appeals of Maryland referred to in this proviso is that to be found in 48 Md., page 49, in which case the Court of Appeals had under consideration the charter of the Baltimore & Ohio Railroad Company, passed in the year 1826, which contained a similar provision for the exemption of its property from taxation as that contained in the Act of 1827, chartering the Baltimore & Susquehanna Railroad Company. In this case, the Court of Appeals held that the tax exemption included all franchises of the company, and all the property, works and structures of the company, which were reasonably convenient and appropriate to the maintenance and operation of the railroad authorized to be constructed by the charter of the company granted in 1826, chapter 123; but did not include property or works not coming within this classification; and, therefore did not include elevators except so far as they

were necessary in connection with the receipt and delivery of grain and freight to consignees, and that they were taxable so far as they were used for other purposes, and the exemption did not include hotels, except in so far as they were used in connection with travel over the railroad; nor did it include properties, or the gross receipts from the properties, constructed under charters granted subsequently to the original charter, and which subsequent charters contained no exemption from taxation.

The Contract Was Made Upon Valuable Consideration.

In support of this proposition, it is respectfully submitted—

I.

The consideration for the contract thus entered into was the compromise and settlement of the pending litigation between the State and the company mentioned in the Act, in which litigation was involved the question of the right of the State to levy *any* tax upon any of the property, franchises, or gross receipts of the company; and the consideration received by the State was the agreement thereby made upon the part of the company to pay forever to the State, taxes on its gross receipts to the extent mentioned in the Act, and the payment of the certain sum of money in the Act mentioned.

That the contract was supported by a sufficient consideration, moving from the company, appears, therefore, on the face of the Act, of which Act the preamble is an important part, and furnishes the key-note to its construction. The contract thereby made between the State and the company was a settlement of all *disputed questions* upon the subject of taxation

then existing between the State and the company, under which the company paid a large sum of money to the State, none of which it owed according to its contention, and agreed to pay forever an annual tax of one-half of one per cent. on all its gross receipts in Maryland, whereby abandoning to this extent, its claim to exemption from taxation, and its right to have decided by the Supreme Court of the United States the question whether it was liable to pay anything at all.

(*a*) Either the compromise of a doubtful claim or the relinquishment of a pending suit is a good consideration for a promise; and to support a compromise it is sufficient that the parties entering into it, thought at the time that there was a *bona fide* question between them, although it may eventually turn out there was in fact no such question.

Law Rep., 5 Queen's Bench, 451, Callister vs. Bischofheim.

27 Md. 172, Harte vs. Stahl, and cases cited.

5 Peters, 114, Union Bank vs. Geary.

(*b*) Inasmuch as in the cases of the State of Maryland vs. N. C. Ry. Co., 44 Md. page 131, there was drawn in question the validity of the Statutes of Maryland repealing the exemption claimed by the said company by virtue of the Act of 1827, chapter 72, section 20, on the ground of their being repugnant to the Constitution of the United States, which prohibits a State from making any law impairing the obligation of a contract, and the decision of said Court was in favor of their validity, there could be no doubt that a writ of error would have laid to the Supreme Court of the United States, on behalf of the company, from the final judgment when it should

have been rendered by the Court of Appeals after a re-trial in the Superior Court.

153 U. S. 492 to 495, Mobile &c., R. R. Co. vs. Tennessee.

168 U. S. 501, Douglass vs. Kentucky.

And as at the time of the passage of the Act of 1880, chapter 16, no re trial of the cases had yet taken place in the Superior Court of Baltimore City, *the State of Maryland, the plaintiff in the cases, having allowed the cases to lie dormant*, and until that trial and a judgment rendered thereia against the company, and an affirmance of that judgment by the Court of Appeals of Maryland, no writ of error would lie to the Supreme Court of the United States, the company, at the time of the passage of the Act of 1880, chapter 16, still had the right to take the cases to the Supreme Court of the United States.

(*c*) As the powers of the General Assembly of Maryland are limited only by the provisions of the Constitution of the State and of the United States, the Legislature of 1880 had the undoubted and unlimited power to determine whether the decision of the Supreme Court of the United States, in case a writ of error had been sued out by the Company, was sufficiently a matter of doubt as to make it wise for the best interests of the people of the State, to make the compromise and settlement of the then pending litigation.

15 Md., 387, 388, 472, 473, M. & C. C. of B. vs. State.

75 Md. 313, Jackson vs. Walsh.

The General Assembly being therefore clothed with full power to deal with the subject by an Act of Assembly passed by it, and approved by the Governor, as

required by the Constitution of Maryland, and having in the exercise of this power determined, and evidenced its determination in the Act of 1880, Chapter 16, that the result of the litigation which the company had the indisputable right to carry to the Supreme Court, was of a sufficiently doubtful character to make it for the best interest of the State to make the compromise which is made by the said Act, this action of the State in 1880 is forever conclusive upon it, and it is not within the judicial power of the State to enquire as to the question whether the legislature was mistaken in the opinion that the result of the litigation was a matter of doubt.

II.

But even if this Court could inquire into and decide the question whether the result of the litigation when carried to the Supreme Court was a matter upon which there could be at the time of the passage of the Act of 1880, a *bona fide* difference of opinion, the Court could not reach the conclusion that such was not the case.

For although the majority of the Court, in the cases of the State of Maryland against the Northern Central Railway Company, 44 Md. 131, held (1) that a new corporation, the Northern Central Railway Company, was created by the Act of 1854, Chapter 250, which was, therefore, a new charter of a corporation in the year 1854, and that the immunity from taxation which had been held by the Baltimore and Susquehanna Company, was vested in the said Northern Central Railway Company, but was so vested by virtue of a new and special grant made to said Company by the State of Maryland as a part of the said Act by which the new corporation was created, and that as said Act and all its parts was subject to

repeal or alteration by virtue of the provisions of the Constitution of 1850, said immunity was subject to repeal—(44 Md. 163 to 165)—yet Judge Alvey, in his vigorous and able opinion, (from which I have quoted in a previous part of this Brief, pp. 12-14), denied the correctness of one of the premises upon the correctness of which the conclusion reached by the Court depended, that is to say, *denied* that the Northern Central Railway Company derived all its powers, rights, privileges and immunities by a new grant from the State of Maryland made by the Act of 1854, and that the enjoyment by the Northern Central Company of the immunity from taxation which had belonged to the Baltimore and Susquehanna Company, was *derived by a new* grant made to said Northern Central Railway Company by said Act of 1854, chapter 250; but on the contrary, he claimed that the said immunity had never been surrendered by the Baltimore and Susquehanna Company, and was with the assent of the Legislature of Maryland transferred, in all its fullness and life, to the Northern Central Railway Company, *by virtue of the articles of union* entered into between the consolidated companies, and by virtue of the said Baltimore and Susquehanna Company being a party thereto; and that, therefore, said immunity was as much beyond the power of the Legislature of Maryland to interfere with as it had been while possessed by the Baltimore and Susquehanna Company, it being admitted by the majority of the Court (44 Md. 163), that while said immunity was held by the Baltimore and Susquehanna Company, it could not be in any way impaired by any action of the Court. (44 Md. 174 to 177, Alvey, J.)

2. Therefore, inasmuch as the difference in the result reached by the majority of the Court in the said case in 44 Md. 131, and in the result reached by the minority, depended altogether upon the different

construction placed by each upon the instrument relating to the said rights and immunities, and from which they emanated, it is impossible to affirm that the parties to said instrument could not *bona fide* believe that the decision of the Supreme Court of the United States, when it came to construe said instrument, might not agree with the minority.

3. For, while the Supreme Court of the United States has in several cases held that a consolidation of railroad companies by an Act of the Legislature may so operate as to make the charter of the consolidated company thenceforth amendable or repealable at the will of the Legislature, where there is a general statute or constitutional provision declaring that all charters passed subsequently to the adoption of the constitution or the general Act, should be amendable and repealable, and that under this power the State may take away immunities from taxation which, prior to the consolidation, had belonged to one of the companies, and in the consolidating act had been transferred to the consolidated company, yet the Court has *uniformly* held that whether such a construction is to be put upon any particular Act authorizing the consolidation of companies, must depend *upon the particular terms of the Act and the intention of the parties.*

92 U. S. 670, Central R. R. vs. Georgia.
92 U. S. 677, Branch vs. Charleston.
94 U. S. 718, C. & O. R. Co., vs Virginia.
117 U. S. 139, 149, Tennessee vs. Missouri.
152 U. S. 305, Keokuk & W. R. Co. vs. Whitlock.

4. Therefore, as the true meaning and effect of the Maryland Act of 1854, chapter 250, and of the consolidation effected thereunder was the subject of directly diverse views by the majority and minority

of the Court, there was the amplest ground for the Legislature *bona fide* to believe that the conclusion of the Supreme Court of the United States was a matter of sufficient uncertainty as to warrant the Legislature in determining to deal with the matters in controversy between the State and the company just in the way the Act of 1880 dealt *with them*.

It is, therefore, respectfully submitted that the FIRST Proposition (Brief page 16) of the plaintiff in error has been sustained.

SECOND PROPOSITION.

The contract thus made was a valid contract establishing the extent to which the property, franchises and gross receipts of the railway company could be taxed by the State of Maryland, not only so long as the contract existed, but it was not subject to alteration or abrogation by the State of Maryland by a repeal of the Act of 1880, chapter 16, or otherwise; and the contract remained forever binding upon both of the parties to it until put an end to by the consent of both parties.

In support of this proposition we respectfully submit:

I.

(1) It is settled by the decisions of this Court, as well as by the decisions of the State of Maryland, that a State, unless prohibited by its Constitution, may make a contract with a corporation chartered by it, to exempt all of its property from taxation, or agree to accept from it a less rate of taxation than that to be imposed on others, either for a specified

time or permanently if such contract has a sufficient consideration to support it.

18 Wallace, 225, The Delaware Railroad Tax.

16 Howard, 428, Ohio Life I. Co. vs. Debolt.

16 Howard, 389, State Bank of Ohio vs. Knoop.

8 Wallace, 427 and 438, Home of Friendless vs. Rouse.

50 Md., 428 and 429, Appeal Tax Court of Baltimore City vs. Grand Lodge, etc.

(2) It is also settled by the decisions of this Court, and also by those of Maryland, that where a State grants a charter to a corporation, which is accepted, and therein stipulates for an exemption of its property from taxation, partial or total, and the Constitution of the State does not prohibit such exemption, a valid contract for such exemption is made: the objects for which the corporation is created and the performance of its duties constitute a sufficient consideration.

8 Wallace, 437 and 438, Home of Friendless vs. Rouse.

(3) And it is entirely competent for a State, unless prohibited by its constitution, to make an agreement with a corporation, subsequent to its charter, for an exemption of its property from taxation, partial or total, and such an agreement constitutes a valid contract if supported by a consideration of some kind.

50 Md. 428 and 429, Appeal Tax Court of Baltimore City vs. Grand Lodge, etc.

24 Howard, 300, Directors of Christ Church vs. County of Philadelphia.

22 Wallace, 528, Tucker vs. Ferguson.

(4) At the time of the passage of the Act of 1880, chapter 16, there was nothing in the Constitution of Maryland, nor has there ever been anything in any of the Constitutions of Maryland, which prohibits the State from exempting the property of a particular corporation from taxation, either total or partial. In this respect the present Constitution, that of 1867, is the same as all preceding constitutions. Among the many cases in Maryland which have recognized the validity of such exemptions are

12 Gill & Johnson, 117, (relating to the Charter of the Balto. & Susquehanna R. R. of 1827, chapter 22.)

6 Gill. 288, Mayor and City Council of Balto. City vs. B & O. R. R. Co., and 48 Md. 749, State of Md. vs. B. & O. R. R. Co., (in reference to the charter of the Balto. & Ohio R. R. Co.)

2 Gill. 355, P. W. & B. R. R. Co. vs. Bayless, and 45 Md., page 361, State of Md. vs. P. W. & B. R. R. Co., (in reference to the charter of the P. W. & B. R. R. Co.)

50 Md. 428 and 429, Appeal Tax Court vs. Grand Lodge, etc.

The practice of making such exemptions thus commenced may years ago, still, from time to time, continues in the legislation of the State.

II.

It follows from the foregoing that the contract entered into between the State of Maryland and the Northern Central Railway Company by the making and acceptance of the Act of 1880, chapter 16, having been made for valuable consideration was a valid and effective contract, according to its terms at least

AS LONG AS THE CONTRACT EXISTED, and that until the contract was terminated, the only tax which could be imposed by the State of Maryland upon any of the franchises, property or gross receipts of the Company, is an annual tax of one-half of one per cent. upon the gross receipts of the Company within the State of Maryland.

III.

The contract thus made was not subject to alteration or abrogation by the State of Maryland by a repeal of the Act of 1880, Chapter 16, or otherwise, but remained binding upon both parties to it until modified or put an end to by the consent of both of them.

The correctness of this proposition follows necessarily from the foregoing argument, unless the Constitution of Maryland in existence at the time the contract was made prohibited the Legislature of the State *from making the contract irrepealable.*

It is respectfully submitted that the Constitution did not prohibit the Legislature from making this contract irrepealable, as I will indeavor to show in connection with an examination of the opinion of the Court of Appeals of Maryland on which its judgment in the case is founded.

IV.

The first ground taken by the Court of Appeals of Maryland in support of its decision that the Legislature of Maryland had no power, by the Act of 1880, Chapter 16, to make with the Railway Company the irrepealable contract which it attempted to make, and supposed it was making, by the passage of that Act, is this, that prior to the passage of the Act of 1880, it had been determined by the Court of Appeals of

Maryland in the case of the State vs. the Northern Central Railway Company, 48 Md. page 131, that all the rights and privileges, including the exemptions from taxation, which had been granted to the Baltimore & Susquehanna Railroad Company by the Act of 1827, were vested in the Northern Central Railway Company, *not by transfer from the Baltimore and Susquehanna Railroad Company, but as a new and special grant by the State*, under the Act of 1854, Chapter 250; and that by *that Act* the Northern Central Railway Company had been created a corporation, and that it *was not created by the articles of union executed by the several companies out of which it was formed;* that as the Act was passed while the Constitution of 1850 was in operation, all the rights, privileges and immunities, it had under its charter, were subject to repeal by the Legislature, whenever in its judgment the public interest required such repeal; and that by legislation subsequent to the Act of 1854 its exemptions from taxation had been repealed.

From this premise the Court, in the present case drew its conclusion, that as the Act of 1880, Chapter 16, which was declared to be supplemental to the Act of 1854, Chapter 250, granted a *partial exemption* to the Company, this exemption was subject to repeal under the provisions of Section 48 of Article 3 of the Constitution of 1867, as *the total exemption* had been subject to repeal under said Constitution and its predecessors.

V.

In reply to this position of the Court of Appeals of Maryland, it is respectfully submitted:

(1) That although the decision of the Court of Appeals of Maryland in the case of the State of Maryland vs. The Railway Company, 48 Md., page 131, was as above stated, and had been made at the

time the Act of 1880, chapter 16, was passed, *yet the fact that this decision had been thus made did not in any way prevent the Legislature of Maryland from making an irrepealable contract with the railway company upon the consideration and terms set forth in the Act of 1880.*

If, at the time of the passage of the Act of 1880, it had been *finally adjudicated* that all the rights, privileges and immunities of the Northern Central Railway Company under its charter were subject to repeal or alteration by the State of Maryland at its pleasure, then it would, of course, necessarily follow, as was decided by the Court of Appeals of Maryland in the case now before the Court, that neither the Legislature of 1880 nor any other Legislature of the State, could make an irrepealable contract with the company to limit the right of taxation of the property of the company by the State of Maryland.

Now if the conclusion of the Court of Appeals, as above stated, that because the Court of Appeals in in the case referred to had determined that the rights, privileges and immunities of the company had been declared by that decision subject to alteration or repeal, therefore the Legislature of 1880 could not make a contract fixing the extent of the taxation of the property permanently, is a sound one, the *sole basis* upon which it can rest must be that that decision of the Court, as made in the case above stated, was *a final adjudication of the matters so decided by it.*

But it has been shown in the previous part of this brief that so far from that adjudication having ascertained finally, at the time of the passage of the Act of 1880, the respective rights of the State and the company in reference to the enjoyment by the company of the rights and immunities which had been those of the Baltimore and Susquehanna Railroad Company, the company had the undoubted right to have that question determined by this Court; and

that if its contentions (supported as they were by the opinion of Mr. Justice Alvey, who dissented from the opinion of his brethren in the case above mentioned) had met with the sanction of this Court the result would have been that the State of Maryland *never at any time could have subjected any of the property or franchises of the company to taxation.*

It has been further shown that the State of Maryland, speaking in the Act of 1880, chapter 16, through that branch of its government which had the indisputable right to speak upon the subject, had determined that what would have been the result, if the case had been brought to this Court, was sufficiently a matter of doubt to make it the part of wisdom upon the part of the State to make the contract it did make by the Act of 1880, and thereby secured in perpetuity the obligation of the Company to pay the amount of taxes therein stipulated to be paid, in addition to securing the money payment mentioned in the Act. I respectfully refer to that portion of the brief in which this subject has been discussed to show that the contract made between the State and the Company, the terms of which are embodied in the Act of 1880, was supported by a valuable consideration, and was a valid contract. (Brief pages 25 31.)

If it is true, therefore, that the Legislature of Maryland had the right, on behalf of the State of Maryland at the time of the passage of the Act of 1880, to determine that the ultimate decision to be made of the then matter in controversy between the State and the Company, was sufficiently a matter of doubt to make it wise to settle the controversy by securing the right in perpetuity to the payment of a partial tax by the Company rather than run the risk of all of its property being exempt from taxation, then, inasmuch as this was the import of the contract between the State and the Company, the fact

that the Court of Appeals of Maryland in the decision referred to, had decided this controverted question one way, *goes for naught* in determining whether the Legislature of Maryland had the power by the Act of 1880 to agree that the extent of taxation therein mentioned should be permanently the extent of such taxation.

It necessarily results from the foregoing that there is no foundation for the proposition of the Court of Appeals of Maryland in the opinion in the case now under review, that because the Court of Appeals of Maryland determined in the case of the State vs the Railway Company, in 44 Maryland, that all the rights enjoyed by the Railway Company under the Act of 1854 were subject to repeal or abrogation at the pleasure of the State, therefore the Legislature had no power by the Act of 1880 to make the irrepealable contract thereby made.

VI.

The next, and *main*, ground upon which the Court of Appeals in its opinion in the case now before this Court, places its decision that the Legislature of Maryland had no power by the Act of 1880, chapter 16, to make the irrepealable contract therein made with the Railway Company, is that the Court of Appeals of Maryland in the above-mentioned case of the State of Maryland vs. The Northern Central Railway Company, 44 Md. page 131, decided *that any form of law which grants to a corporation such corporate privileges as immunity from taxation is one passed pursuant to the said 48th section of Article 3 of the Constitution*, and is, therefore, *subject to alteration or repeal by future legislation.*

VII.

With the greatest respect to the Court of Appeals of Maryland I most confidently claim that in saying in

this case (Record, page 24 top) that the Court in the case in 44 Md., page 131, determined "that any form of law which grants to a corporation such corporate privilege as immunity from taxation is one passed pursuant to the section of the Constitution referred to, and is, therefore, subject to alteration or repeal by future legislatures," the Court fell into manifest error; and that an examination of the opinion of the Court of Appeals in the case in 44 Md. fully justifies the claim I now make.

The Court in that case, after giving a history of the circumstances attending the passage of the Act of 1854, Chapter 250, for the union of the Baltimore and Susquehanna Railroad Company with the other companies, out of which the Northern Central Railway Company was formed, and determining that up to the time of the union the Baltimore and Susquehanna Company by virtue of its charter had an entire exemption from all taxation under the laws of Maryland, then determined that whatever property, rights and privileges formerly belonged to the Baltimore and Susquehanna Company were vested in the new company, but that these rights and privileges became new and special grants to the Northern Central Railway Company, dating from the period when the Act of 1854 went into operation, and that the last-mentioned Company was not created by the articles of union which the several Companies were authorized to execute, but was created by the Act of 1854 itself; and after quoting the provisions of the Constitution of 1850 (by which it was provided that corporations may be formed under general laws, and, under special circumstances, by special act, and that all laws and special acts under which corporations should be formed may be altered from time to time or be repealed), and stating the object of such a provision in the Constitution of 1850, substantially in the lan-

guage used by this Court in the cases of Miller vs. The State, 15 Wallace, 478; Tomlinson vs. Jessup, 15 Wallace, 457, which cases the Court cites, the opinion proceeds as follows:

"The appellee having derived its charter under the Act of 1854, when the Constitution of 1850 was in force, and the exemption from taxation claimed, being a part of such charter, the power of the Legislature to repeal or revoke the immunity thus granted is, we think, too clear to be questioned. The fact that no such right was reserved in the Act of 1854, incorporating the appellee, can make no difference. The Constitution is the supreme and controlling law, and under its provisions the right to alter, amend or repeal every charter granted by the Legislature to a private corporation is reserved as fully as if such reservation had been made in the charter itself. Miller vs. The State, 15 Wallace, 478; Tomlinson vs. Jessup, 15 Wallace, 457; Fletcher vs. Peck, 6 Cranch, 136; Terrett et al. vs. Taylor et al., 9 Cranch, 51.

"To hold otherwise would be to decide that the Legislature by omitting such a reservation could confer a power beyond the interference of the Legislature, and thus exercise a power forbidden by the Constitution. The charter of the appellee must therefore be construed as if such reservation had been made in express terms by the Act of 1854. And if so, the case comes directly within the principle laid down in Washington County vs. Franklin Railroad Company, 34 Md. 160.

"In accepting the Act of 1854, and in the execution of the articles of union, under the operation of which the Baltimore and Susquehanna Railroad Company has merged and ceased to exist, the stockholders are presumed to have known that the corporate powers and privileges granted by that Act to the Northern Central Railway Company were subject to the provisions of section 47, article 3 of the Constitution, and that the exemption from taxation claimed under that Act was liable at any time to be repealed by the Legislature, whenever in its judgment the public interests required it. Be that however as it may, it was not within the power of the Legislature under the Constitution of the State to grant to the appellee immunity from taxation, or any other corporate privilege, beyond the power of a subsequent Legislature to repeal or revoke."

44 Md., page 65.

It will thus be seen that the Court decides (1) that the Railway Company having derived its charter under the Act of 1854, when the Constitution of 1850 was in force, the power of the Legislature to repeal the exemption from taxation which was a part of its charter, existed, by virtue of the provisions of the Constitution, to the same extent as if the power to repeal had been reserved in the charter itself; (2), that in accepting the Act of 1854 and in the execution of the articles of union therein referred to, the Baltimore and Susquehanna Railroad Company had merged and ceased to exist, and the *stockholders are presumed to have known that the corporate powers and privileges granted by that Act to the Northern Central Railway Company were subject to the provisions of the Constitution, and that the exemption from taxation was liable, at any time, to be repealed by the Legislature.* Having stated this second proposition, that is to say, the one involving the presumption and knowledge by the Stockholders, the Court adds, "*be that, however, as it may, it was not within the power of the Legislature under the Constitution of the State, to grant to the appellee immunity from taxation, or any corporate privilege, beyond the power of the subsequent Legislature to repeal or revoke.*"

Now it is perfectly manifest that all that the Court decides in the language which I have quoted, is that irrespective of what the Stockholders ought to have known as to the effect of the constitutional provision in question upon the right of the Legislature to repeal the tax exemption referred to, the Legislature of the State could not grant to the Northern Central Railway Company immunity from taxation, *or any other corporate privilege*, beyond the power of a subsequent Legislature to repeal or revoke; *because*, as the Court had already shown in the preceding part of its opinion, (1) the Constitution, which was in force at the time of the grant of the charter, declared that all

charters granted while that Constitution was in force were to be subject to alteration or repeal; and (2) the exemptions from taxation claimed by the Company *were derived by the direct grant of them made in the Act of 1854.* All that the Court therefore decides is that, where it is ascertained that the rights claimed by a company *exist only by virtue of a grant of them made in a charter granted during the existence of the provision of the Constitution which declares that all such grants are repealable*, then such rights are repealable by virtue of the Constitutional provision.

The sole foundation and basis of the determination made by the Court that the rights and privileges of the Company are subject to abrogation or repeal, is *the prior adjudication by the Court*, that they were derived by express grant from the State, made in an Act of the Legislature, passed at a time the provision of the Constitution was in force; thus announcing the familiar doctrine of this Court, and *basing its opinion upon a few of the many cases* in which this Court has established this principle of jurisprudence.

The Court neither decides, nor in any way intimates a decision upon, any other matter than the one just stated. And yet the Court of Appeals of Maryland in the opinion in the present case, after quoting the language from the previous opinion of its predecessors, upon which I have commented, says (Record, page 23 bottom), "It is to be observed that the Court does not rest the inability of the Legislature to grant to a corporation an irrepealable exemption from taxation, upon the form or character of the particular Statute then under consideration, but puts it upon the ground of want of power in the Legislature under the Constitution to make such a grant at all. The Court certainly in effect determines that any form of law which grants

to a corporation such a corporate privilege as immunity from taxation is one passed pursuant to the Section of the Constitution referred to, and is, therefore, subject to alteration or repeal of future Legislatures."

I respectfully submit that the interpretation thus put upon the language of the Court in the previous opinion, has been shown by me to be altogether unwarranted. The Court, in the opinion in 44 Md., neither decides, nor intimates in the remotest way an opinion upon, the question whether in a case where the question at issue *was whether the rights claimed by a corporation* (be it an exemption from taxation or any other right) were derived by a grant from the State made while the above mentioned constitutional provision was not in force, or existed independently of such grant, and so not coming under the constitutional provision in question, *a valid contract could be made by the State whereby a surrender was made by it of a part of its claims, in consideration of a surrender made by those claiming rights of a part of such rights.*

VIII.

(1) The judges of the Court of Appeals of Maryland having thus wrongly interpreted the decision made by their predecessors in the case in 44 Md., as determining that by virtue of the Constitutional provision contained in section 48 of Article 3, *any statute of the State* under which a contract is made by the State with any corporation upon the subject of taxation, is repealable at the pleasure of the State, makes this interpretation of the decision of their predecessors the *basis* of the *main ground* of their decision that the Act of 1880, chapter 16, was, notwithstanding its terms, repealable by any subsequent Legislature, and therefore, lawfully repealed by the Act of 1890, chapter 559. For immediately

following the above-mentioned erroneous interpretation of the decision in 44 Md., the Court says:

"*If this construction of the Constitution be correct*, how can we escape the conclusion that the Legislature of 1880 had no greater power, by the passage of the Act upon which the appellee bases its claim to a partial exemption from taxation, to grant that exemption in an irrepealable form, than the Legislature of 1854 had to grant a total exemption in like form by the Act which it passed and which this Court has held to be subject to repeal at any time? The appellee attempts to answer this query by calling attention to the fact that the Act of 1880 differs from that of 1854 in the essential particular that it, upon its face and especially in its preamble, professes to have been passed for the *purpose of adjusting and settling by agreement the controversies which were then pending between the State and the appellee in reference to the extent and validity of the claims of the latter to exemption from taxation*, and that the contents of the Act itself show that the appellee in accepting it and complying with its terms gave up a valuable right of appeal to the United States Supreme Court, and paid a large sum of money to the State, thus supplying a valid consideration which made the action of the State binding and permanent. Without going into the contents of the Act in detail or fully reciting the things done upon the faith of it by the appellee *it may be conceded that, if there were no constitutional difficulty in the way, the transaction between the State and the appellee as part of which the Act of 1880 was passed was one so far in the nature of a contract or agreement that neither party could abrogate it without the consent of the other.*

"The difficulty with the appellee's contention *is that the inability of the Legislature under the Constitution to make in 1880 a valid and irrepealable grant of such a corporate privilege as immunity from taxation did not rest upon the want of a suffi-*

cient consideration for the grant but upon the fundamental want of power in the Legislature to make it by reason of the provisions of the Constitution which is the supreme and controlling law of the land. It is plain, therefore, that the question of consideration *vel non* cannot be a controlling one in determining the question now at issue. If as this Court has decided in 44 Md. the appellee in executing the articles of union under the Act of 1854 must be presumed to have known that the privileges granted by that Act were subject to the provisions of the Constitution and repealable at any time, so must the appellee in accepting the provisions of the Act of 1880 be presumed to have known that the immunity from taxation granted by that Act was in like manner and for the same reasons subject to repeal by future Legislatures."

(2) It will be thus seen that the Court concedes (1) the correctness of the claim made by the Plaintiff in Error that the State and the Railway Company intended and supposed that by the Act of 1880, chapter 16, and compliance with its conditions, a contract in its nature permanent and irrepealable, had been made upon the terms and for the purposes therein set forth; and (2) that if the constitutional provision *did not inhibit the making of such an irrepealable contract*, it was made upon sufficient valuable consideration, and cannot be abrogated by the State any more than it can be abrogated by the Railway Company,

(3) It will be further seen that the Judges place the decision of the inability of the Legislature to make irrepealable the contract made between the State and the Company, *first and mainly*, upon the ground that their predecessors had decided in the previous case, that under no circumstances could a valid contract be made between the State, acting through its Legislature, and a corporation created by it upon the sub-

ject of taxation, which was not subject to alteration or abrogation by virtue of the constitutional provision referred to. Yet the present Court seems also to intend to give its own consent to the same doctrine.

(4) Upon the concession made by the Court, as above stated, we are entitled to consider that the sole question remaining for discussion is, whether the Constitution of Maryland prohibited the Legislature from making irrepealable the contract which it made with the Railway Company, by virtue of the Act of 1880, chapter 16.

IX.

The decision of the Court of Appeals we are now to examine is, that the Legislature could make, irrepealable, the contract it made with the Railway Company, by the Act of 1880, because under Section 48 of Article 3 of the Constitution of Maryland, it is not lawful for the Legislature to pass any law whereby there is made with any corporation created by it an irrepealable contract relating to the taxation of the property of the corporation, no matter under what circumstances, upon what consideration, or in what form, the contract *may be made.*

It is to be noted that where there is a Constitutional provision which makes Corporation Charters, granted during its existence, subject to alteration or repeal, the reservation has to do with all the rights, privileges and immunities derived by its Charter directly from the State. The immunity from taxation does not occupy any peculiar position in this regard.

(1) The above-mentioned section of the Constitution provides that "corporations may be formed under general laws; but shall not be created by special act, except for municipal purposes, and

except in cases where no general laws exist providing for the creation of corporations of the same general character as the corporation proposed to be created. * * *

"*All charters granted or adopted in pursuance of this section, and all charters heretofore granted or created, subject to repeal or modification, may be altered from time to time or be repealed.*"

(1) It certainly must be admitted, that no corporate rights are within this provision of the Constitution, unless they are contained in charters granted subsequent to the adoption of the Constitution, or in charters, theretofore granted, which were subject to repeal or modification.

(2) There are in Maryland charters granted before the adoption of the Constitution of 1850 (which was the first Constitution which contained the provision of which we are now speaking), whose charters granted exemption of property from taxation, and contained no reservation of the right to alter or repeal them, and whose charters are therefore certainly irrepealable without their consent.

The best known of these corporations is the Baltimore and Ohio Railroad Company, chartered in the year 1826. A part of its railways consisted of the road leading to the city of Washington. By virtue of the charter relating to this part of its road (Act of Md. of 1832, chapter 175, section 8), it is required to pay to the State of Maryland, as a *bonus tax* (21 Wallace 473, B. & O. R. R. Co. vs. State of Md.), one-fifth of the gross receipts from its passenger travel thereon.

In the year 1878 the Legislature of the State and the Railroad Company, believed it for the best interests of all concerned, that a contract should be made between the Company and the State whereby all pending controversies between them should be settled. Accordingly there was passed the Act of Assembly of

Maryland of 1878, chapter 155. In the title it is declared to be an Act "*To adjust and settle finally by an agreement all pending controversies between the Baltimore and Ohio Railroad Company and the State of Maryland, by subjecting the franchises and property of said Company within the State to taxation for State purposes to a certain extent*, and by providing for the payment of a certain indebtedness of the Baltimore and Ohio Railroad to the State," etc.

It will be seen how closely the title resembles that of the Act of 1880, chapter 16.

By this Act it is provided (so far as it is relevant to my purpose to state its provisions) that all franchises and property of every description, and gross receipts of the Company within the State of Maryland should be subject to taxation for State purposes to the extent of an annual tax of one-half of one per centum on the gross receipts of its railroads and branches within the State, but to no further or greater extent or otherwise; that the State releases the Company from the obligation to pay the above-mentioned bonus tax of one-fifth of its gross receipts for the transportation of passengers over the Washington Branch of the Road, and in consideration of this release the Company consents that the contract contained in its charter for exemption from taxation of all of its property shall be so far modified as to subject its franchises and property of every description, and all of its gross receipts, within the State of Maryland, to taxation for State purposes to the extent of one-half of one per cent. on its gross receipts within the State.

Other provisions are made in the Act for ascertaining the indebtedness in the past growing out of the bonus tax of one-fifth of the gross receipts above mentioned, and certain other agreements are entered into by the Railway Company looking to the use of its lines by other Railroad Companies, and in reference

to the rates to be paid for transportation of certain articles of freight. Provision is also made for the acceptance of the Act by the stockholders of the company and for the release of all pending suits on behalf of the State against the Railroad Company brought to enforce the claims of the State against the Railroad Company.

It will thus be seen that in a contract made between the Railroad Company and the State (*in the making of which substantially the exact form of proceeding was taken as is embodied in the Act of 1889, chapter 16*), by which the State of Maryland *surrendered to the company a valuable right of taxation* which had been secured to it by that portion of the charter of the company which appertained to the Washington Branch of the railroad, and in part consideration of this surrender, the Railroad Company agreed to substitute, for the total exemption from taxation in reference to the remainder of its property granted to it in its charter, an agreement to pay in perpetuity a tax of one-half of one per cent. on its gross receipts in the State of Maryland.

(3) Now if the above-mentioned proposition of the Court of Appeals of Maryland, which I am now controverting, is tenable, this contract is subject to alteration or abrogation by the Legislature of Maryland at its pleasure. For it is clearly a contract made between the State and one of its corporations through the instrumentality of the Legislature of the State, whereby immunity from taxation of a part of its road is forever secured, in consideration of rights granted by the Company to the State of Maryland.

Is it true then, that the above-mentioned contract is subject to abrogation by the State, so that, among other consequences of such abrogation, the State would be restored to the right of the bonus tax of the one-fifth of the passenger rates on the Washington

Branch? If it is subject to abrogation by the State, why is it subject to abrogation? It is certainly not within the terms of the constitutional provision in question; for the charter of the Company was not granted subsequent to the adoption of the Constitution of 1867, nor was it when granted subject to modification or repeal.

Although then (to use the language of the Court of Appeals of Maryland in the part of its opinion which we are now considering) the Act of 1878 is "a *form of law which grants to a corporation such* a corporate privilege as "immunity from taxation" how could it be said to be "one passed pursuant to the section of the Constitution referred to, and is, therefore, subject to alteration or repeal by future Legislatures?" And yet the Court of Appeals says that *any form of law* which grants to a corporation such a privilege as immunity from taxation, *is one* passed pursuant to the Section of the Constitution referred to, and is therefore subject to alteration or repeal by future Legislatures.

It is demonstrated, therefore, I respectfully submit, that it cannot be true that *every* statute which authorizes a contract between the State and a corporation is a law coming within the constitutional provisions, and so repealable.

(4) As I have shown by the example of the Baltimore and Ohio contract above mentioned that it is not true that every contract made between the State and a corporation securing to the latter an immunity from taxation is made repealable by the Constitutional Provisions in question, the next inquiry is, is there anything in the nature of the subject of such a contract which deprives the Legislature of the right to make it irrepealable?

(5) It is axiomatic that in creating a Legislative Department, and conferring upon it the Legislative power, the people of Maryland must be understood to have conferred as full and complete power as vests in, or may be exercised by, the sovereign power of any country, subject only to such restrictions as they might have see fit to impose by the Constitution of the State, and subject, of course, to the limitations which are contained in the Constitution of the United States. Plenary power in the Legislature of the State for all purposes of civil government is the rule, and the prohibition to exercise a particular power is the exception.

Cooley on Cons. Lim,, page 104.
15 Md. 387, 388, 472, 473, Mayor and C. C. vs. State.
75 Md. 315, Jackson vs. Walsh.

(6) There is nothing in the Constitution of Maryland which prohibits the State from entering into contracts with corporations; the State may, therefore, by an Act of the General Assembly, approved by its Governor, make any contract upon valuable consideration which in its judgment would be promotive of the best interests of the people of the State; such a contract may be made as well with a corporation as with an individual; and whether the contract is one which it is for the best interests of the State should be made, the Legislature, with the approval of the Governor, has the absolute right to determine.

The only limitation upon this power to contract with a corporation is that which is contained in the Constitutional Provision we have been considering. That the contracts above mentioned may be made, as well upon the subject of taxation of such corporations, as upon any other subject, is well known to the Court, and has been often stated by it, and I have

put upon the brief—page , some of its cases upon this subject.

7. It necessarily follows then, that if a contract is made by the State with a corporation *regulating permanently* the subject of taxation of its property, this contract cannot be abrogated by the Legislature, unless it is a contract, made with a corporation, which comes within the terms of section 48 of Article 3 of the Constitution; and that it is not true that every contract made with a corporation regulating permanently the taxation of its property, which is one coming within this section.

I have shown that the contract made with the Baltimore and Ohio Railroad Company by the Act of 1878, does not come within the scope of the Constitutional provision, and that, therefore, for the reasons above stated, it is not repealable, *though it by its terms regulates the taxation of its property permanently.*

I have considered the contract between the Baltimore and Ohio Railroad Company and the State of Maryland (1) for the purpose of showing by a concrete example that, contrary to the position taken by the Court of Appeals of Maryland, a valid, irrepealable contract may be made by means of an Act passed by the Legislature of Maryland with a corporation *regulating permanently the extent of taxation of the property of that corporation:* (2) for the purpose of showing that the State has exercised this power in reference to one of its chief corporations (no intimation has ever been given that this contract is the subject of abrogation), and exercised it, shortly before the passage of the Act of 1880, Chapter 16; (3) for the purpose of showing the bearing of this contract upon the question of whether the contract made under the Act of 1880, Chapter 16, is within the

Constitutional provision in question, and so subject to abrogation by the Legislature of Maryland.

I proceed to make of the contract of the Baltimore and Ohio Railroad Company the use last above mentioned.

In doing so, I assume, (as I believe has been shown in the previous part of this Brief), that the Legislature of Maryland was clothed with adequate power to *determine conclusively* for the State of Maryland the question which by the passage of the Act of 1880, Chapter 16, it did assume to determine; that is to say, that the result of a Writ of Error prosecuted to this Court to bring up the question at issue between the Company and the State, as passed upon by the Court of Appeals of Maryland in the case in 44 Md., page 131, (which question was, whether the Northern Central Railway Company held the rights and privileges, including immunities from taxation which had been those of the Baltimore and Susquehanna Railroad Company, by virtue of a direct grant of them made to the Northern Central Railway Company in the Act of 1854, Chapter 250, or so held them by virtue of an irrepealable grant made of them to the Baltimore and Susquehanna Railroad Company.)

Because of the contract made by the Act of 1880, it never has been finally adjudicated, by that tribunal, to which the Railway Company had the Constitutional right to resort, that it held the immunity from taxation, (originally granted to the Baltimore and Susquehanna Railroad Company in a charter which was irrepealable under the decisions of the Court of Appeals of Maryland, as heretofore shown, by a grant from the State of Maryland which was repealable or amendable.) As long as that question remained unadjudicated finally with the pending right upon the part of the Company to have it finally

adjudicated, it had not been ascertained that this immunity was held subject to the power upon the part of the State to extinguish this immunity.

The Legislature saw fit to prevent the final adjudication above mentioned by the making of the contract set forth in the Act of 1880. If upon the prosecution of the writ of error to this Court, the prosecution of which was prevented by the State in assenting to the terms of the contract set forth in the Act of 1880, the contentions of the Railway Company had been sustained, the Company would now hold an exemption from taxation *of all its property in Maryland*, as granted to the Baltimore and Susquehanna Railroad Company, and it would hold them, not by virtue of any charter granted under the Constitution of 1867, or any other charter which, at the time of the adoption of the Constitution of 1867, was amendable: and its exemption from taxation would not be, therefore, subject to repeal or amendment under the Constitution of 1867.

In this condition of things the State, through a department of its government authorized to speak for it, instead of abiding by the *final judicial adjudication* of the question whether all the property of the company was forever exempt from taxation, or whether it was all forever subject to taxation, *determined that it was for the best interests of the State that this question should be finally settled by an agreement made by the parties.* It was simply a question appertaining to the revenue of the State, and whether it was better to *run the risk* of being forever deprived of all contribution from taxation of the property of the company, or whether it should secure *certainly* a contribution from that taxation although a less amount than if all the property of the company was subject to taxation. The doubt, which the Legislature authoritatively ascertained to exist on this question, was sufficient to authorize it to make a final settlement of the question, and upon

such terms as in its judgment was best for the interests of the State. The Legislature, on behalf of the people of the State of Maryland, had the indisputable right to determine this question. Accordingly the State made a contract with the company, whereby it surrendered a part of its claim, and thereby a part of the property of the company was forever made subject to taxation, and the company surrendered its claim that *all of its property was exempt from taxation*. The fact that these terms involved the agreement to accept *in perpetuity* from the company an obligation to pay tax to a certain extent, in consideration of the State's abandoning a claim for any greater payment by it, does not in any way impair the validity of the contract: because the Legislature had the clear right to speak for the State in making the terms.

The contract thus validly made was a substitution for the pre-existing claims of the State and of the company, and therefore the status of the company, including its rights and duties, are those fixed by the contract.

It must, therefore, remain forever undecided and unascertained that the Company derived all of its rights and privileges by virtue of the direct grant made by the State to the company in the Act of 1854.

It has not, therefore been *and because of the contract it cannot now be* ascertained that the immunity from taxation enjoyed by the Railway Company at the time of the passage of the Act of 1880 was held under a statute, which under the Constitution is amendable or repealable by the Legislature.

It cannot be, therefore, that this Court will adjudicate that from and after the passage of the Act of 1880, chapter 16, and *notwithstanding* that Act and the performance of its conditions and compliance with its terms, the Company holds its rights, privileges

and immunities, under and by virtue of the power reserved in the Constitution of Maryland to repeal or annul those rights, privileges and immunities: *for so to adjudicate would be to declare that it did so hold them, after the Legislature of Maryland had, by this contract, made upon valuable consideration and in the exercise of its best judgment for the interests of the State, deprived the company of an opportunity to show that it did not hold its rights, privileges and immunities under and by virtue of the Constitutional Provision above mentioned.*

So far as the subject we are now discussing is concerned, the only difference between the contract made by the State with the Baltimore and Ohio Railroad Company by the Act of 1878, and the contract made with the Northern Central Railway Company by the Act of 1880, is that in the case of the Baltimore and Ohio Railroad Company, the State *surrendered a tax upon a portion of the property* of the Company, to which tax the State was *indisputably entitled*, in consideration of the grant by the Company to the State of a right to tax a portion of its property which was indisputably exempt under its Charter. Whereas in the case of the Northern Central Railway Company contract, the State surrendered to the Company the right to tax a part of its property while it, the State, claimed the right to tax the whole of the property, in consideration of the surrender by the Railway Company of its claim that all of its property was exempt from taxation; and the State, through its Legislature, believed it to the best interest of the State that this contract and settlement should be made rather than have a final authorative adjudication of the respective claims of it and the Company.

X.

The Court of Appeals of Maryland in its opinion in the case now before this Court, says:

"The Act of 1880 is declared upon its face to be supplemental to that of 1854, and it grants to the appellee," (plaintiff in error here) "partial exemption from taxation in almost the identical words in which the former Act granted the complete exemption. The practical effect of the later Act upon the prior one, which is the charter of the appellee, was to so amend it as to substitute the partial for the complete exemption.

If this reference to the Act of 1880 is intended by the Court to show that the Act of 1880 is not to be treated as a contract between the State and the Company, it will be seen by looking to the whole title and the whole first section of the Act (this being the section to which the Court refers in the portion of its opinion above quoted), that as the contract agreed upon between the State and the Company was that a tax of one half of one per cent. upon the gross receipts of the Company was to be paid by the Company in perpetuity, and that this was to be accepted in lieu of all other taxes upon its property, *it was necessary in embodying this contract* in the Act that language should be used appropriate to put on the Statute books of the State the requisite provision to carry out the contract. It was absolutely necessary therefore to describe what the rights of the State and the Company were to be, as thus agreed on in the contract. The language of the first section is most appropriate for the above-mentioned purpose. It declares that the Northern Central Railway Company shall have and possess all the powers, rights, privileges and immunities, and be subject to all the duties and obligations which are expressed in the Act of Assembly of Maryland of 1827, chapter 72, entitled "An Act to incorporate the Baltimore and Susquehanna Railroad Company, *but all the franchises and property of every description and gross receipts of said*

Northern Central Railway Company, within the State of Maryland, shall be subject to taxation for State purposes to the extent of an annual tax of one-half of one per centum upon the gross receipts from its railroad and branches lying within the State of Maryland, and from all other sources within this State, and said franchises, property and gross receipts shall not be subject to any other tax under the laws of the State of Maryland.

And when it is declared in the *title* that the Act is supplemental to the Act of 1854, this *follows* the Declaration in the title that it is "an Act *to adjust and settle finally by agreement all pending controversies between the State of Maryland and the Northern Central Railway Company, by subjecting the franchises and property of said Company within the State to taxation for State purposes to a certain extent, and by providing for the payment of a certain indebtedness claimed by the State of Maryland to exist on the part of the Northern Central Railway Company to the State.*"

Inasmuch as the Act, to carry out this contract, necessarily dealt with the relations between the Company and the State; and as the subject of controversy between the parties was whether the Northern Central Railway Company did, or did not, possess, beyond recall by the State, the rights which had been those of the Baltimore and Susquehanna Railroad Company, among which was immunity from taxation, and it was the intent of the contract to determine to what extent those rights should exist in the Northern Central Railway Company and how far they should be modified, *it was entirely appropriate* to speak of the Act which was to embody this contract at once an Act to settle the controversies, and as an Act supplementary to the Act incorporating the Baltimore & Susquehanna Railroad Company. *No other rights were conferred on the Northern Central Railway Company than those which had been conferred upon it by the Act of 1854, Chapter 250;* all that was done in this regard by the Act of

1880 was to settle the question how far these rights were to remain irrepealably the rights of the Plaintiff in error, and upon what terms.

By reference to the Act of 1878, chapter 155, it will be seen that the frame work of that Act, and of the Act of 1880, is substantially the same, both being intended to embody a contract made between the State and the respective companies.

It is respectfully submitted that the First and Second Propositions of the Plaintiff in Error (Brief page 16) have been maintained. The Third and Fourth Propositions (Brief page 16) need no discussion, because the maintenance of the First and Second Propositions maintain the Third and Fourth Propositions. The Record fully shows, and it is undisputed that the Railway fully complied with all the things mentioned in the contract as the conditions upon which it was to become effective, and ever, thereafter, year by year, paid annually the tax of one-half of one per cent. upon its gross receipts.

The Plaintiff in Error respectfully asks that the judgment of the Court of Appeals of Maryland, December 7, 1900, (Record, page 39), may be reversed.

BERNARD CARTER,
For Plaintiff in Error.